

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES WALSH,	:	No. 4:24-CV-01878
	:	
Plaintiff,	:	(Chief Judge Brann)
	:	
v.	:	
	:	
LUZERNE COUNTY, LUZERNE	:	
BUREAU OF ELECTIONS,	:	
and LUZERNE COUNTY BOARD	:	
OF ELECTIONS AND REGISTRATION,	:	
	:	
Defendants.	:	

DEFENDANT LUZERNE COUNTY BOARD
OF ELECTIONS AND REGISTRATION'S MOTION TO DISMISS
PLAINTIFF'S SECOND AMENDED COMPLAINT

Luzerne County Board of Elections and Registration ("Board"), Defendant herein and by and through undersigned counsel hereby moves this Honorable Court to dismiss Plaintiff's Second Amended Complaint, Doc. 22, as follows:

1. This matter originated in state court on October 25, 2024, with Plaintiff's filing of his Complaint in the Court of Common Pleas of Luzerne County, Pennsylvania, along with an accompanying "motion" for special and preliminary injunction. Doc. 1-2 (p. 1, *et seq.*).

2. During a hearing held on October 30, 2024 before the Court of Common Pleas, counsel for Defendants Luzerne County and Luzerne County Bureau of Elections ("County Defendants") advised of the County Defendants'

intent to remove this matter to federal court, something which occurred later that day.

3. After its removal, a telephonic status conference was held by this Court on October 31, 2024, at which time, among other matters discussed, the Court was advised of the error in the Complaint's caption, i.e., the mistaken listing of "Luzerne County Board of Elections" and "Luzerne County Board of Elections and Registration" as defendants, when the former does not exist and the latter is the actual "board" assigned to address election matters. (It was clear that Plaintiff's intent was to name the Luzerne County *Bureau* of Elections as a Defendant.)

4. At that time, the Court tentatively scheduled a hearing for the afternoon of November 1, 2024, and directed Plaintiff to file a corrective pleading which clarified that one of the County Defendants was the Luzerne County *Bureau* of Elections. Plaintiff accomplished this by the filing of the Amended Complaint. Doc. 7.¹

5. At the Court's urging, the parties attempted to resolve this matter among themselves. As Plaintiff's letter to the Court on November 1, 2024 indicated, Doc. 8, although they could not reach resolution, the parties "had helpful

¹ An additional technical error with the name of the Bureau has now been corrected in the caption of the Second Amended Complaint.

communications ... [which] narrowed [the issues] for the court and [allowed for a] presentation [to] be honed."

6. Since there was no resolution, the Court scheduled a hearing on Plaintiff's request for injunctive relief for November 4, 2024 at 4:00 P.M. Doc. 10.² On the morning of the 4th, Plaintiff submitted two letters to the Court, Docs. 11 and 12, withdrawing his injunction request, with both letters indicating that any injunctive relief Ordered by the Court at that time would be "practically [in]effective." Doc. 11.³ Accordingly, the Court cancelled the Evidentiary Hearing. Doc. 14.

7. Thereafter, the County Defendants filed a motion to dismiss, Doc. 15, and supportive brief, Doc. 18, with the Board likewise filing a motion to dismiss, Doc. 16 and its supportive brief, Doc. 19.

8. Without addressing these respective motions, Plaintiff sought and received concurrence from the Defendants regarding his motion to file a Second Amended Complaint, Doc. 20, which the Court granted on December 11, 2024. Doc. 21.

² The Court further directed the Board to "file a 'clear and unambiguous' written indication" of its consent to the removal of this matter, to which the Board complied. Doc. 13.

³ The language of Plaintiff's second letter stated the belief that "it would be difficult for an injunction issued th[at] evening to be effective as a practical matter ..." Doc. 12.

9. That same day, Plaintiff filed the Second Amended Complaint, Doc. 22, which is subject of the present motion.⁴

MOTION TO DISMISS / NON-JUSTICIABLE MATTTER

a. Plaintiff fails to allege facts sufficient to establish standing

10. Paragraphs 1 through 9 are incorporated herein by reference.

11. During the status conference referenced above, the Board through undersigned indicated its position that Plaintiff does not have standing to pursue the present action.

12. "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

13. "In evaluating whether a complaint adequately pleads the elements of standing, courts apply the standard of reviewing a complaint pursuant to a Rule 12(b)(6) motion to dismiss for failure to state a claim: Courts must accept as true all material allegations set forth in the complaint, and must construe those facts in favor of the nonmoving party. ... A dismissal for lack of statutory standing is effectively the same as a dismissal for failure to state a claim." *In re Schering*

⁴ Given the filing of the Second Amended Complaint, the Court denied the respective motions to dismiss, Docs. 15 and 16, as moot. Doc. 23.

Plough Corp. Intron/Temodar Consumer Class Action, 678 F.3d 235, 243 (3d Cir. 2012)(cleaned up).

14. As with the two preceding pleadings, the Second Amended Complaint lacks any semblance of fact establishing Plaintiff's standing to pursue this matter.

15. Throughout the Second Amended Complaint, Plaintiff advances bald allegations that the "Defendants" have: (a) failed to process "approximately 2,500" new voter registrations (Doc. 2, ¶¶ 8, 24, 26, 39, 42, 47a, 51); and (b) have not timely processed "several thousand" mail in ballot applications and ballots themselves (Doc. 7, ¶¶ 9, 27, 40, 43, 47b).

16. Along with failing to offer any specific as to how the Board has failed in its duties regarding these alleged registrations or mail in ballot requests, the Second Amended Complaint further fails to allege that Plaintiff himself is one of these "2,500" individuals or one of the "several thousand" mail in ballot requestors.

17. As the Supreme Court has held, "when the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. [E]ven when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, this Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth*, 422 U.S. at 499 (cleaned up).

18. Plaintiff asserts an interest in his claims because he "is a qualified and registered voter in the Commonwealth of Pennsylvania who resides in Luzerne County and candidate for Representative of the 119th Legislative District in the General Assembly..." Doc. 22, ¶ 11, and is "now the incumbent [Representative] of the 119th Legislative District ..." ¶ 52.

19. These assertions pose nothing specific or personal to Plaintiff regarding the alleged failures relative to voter registration or requests for mail in ballots and suggest nothing other than Plaintiff's "rest[ing] his claim to relief on the legal rights or interests of third parties." *Warth, supra*.

20. Although Plaintiff avers he was the successful candidate for legislative office and is now the incumbent, he fails to claim that any of the alleged "2,500" voter registrants or any of the "several thousand" mail in ballot requestors are electors from *his* district.

21. As noted in the Board's prior motion to dismiss, Doc. 16-3, Plaintiff was neither a candidate nor elected to the legislature from District **119** but instead was the unopposed and now successful candidate for the seat from Legislative District **117**. *See* Exhibit A, accompanying this motion.

22. The Second Amended Complaint now alleges that "upon information and belief" a "majority" of the registrants and mail in electors at issue "intended to

vote for Plaintiff as the Republican candidate for Representative of the *119th* Legislative District..." Doc. 22, ¶ 49 (emphasis added).

23. Alleging that the voters supposedly harmed were from a legislative district other than the one at issue does nothing to establish Plaintiff's standing but instead continues to suggest that he advances claims of those who are other than he.⁵

24. Further, even if his assertion relative to voters from the 119th District were to be excused and the correct District number substituted for the erroneous one, the preface that his assertions are factually based merely on "information and belief," without any specific reference whatsoever as to what these assertions are moored, is impermissibly vague and offers no satisfaction that Plaintiff has established his standing to advance this claim.

25. Additionally, Plaintiff claims that expending campaign funds to litigate the present matter, including the effort to seek "emergency preliminary injunction," Doc. 22, ¶ 51, does nothing to confer standing, since "electing to undertake expenditures to insure against a result that may or may not come" fails to

⁵ The Second Amended Complaint, like the original Complaint and the first Amended Complaint, continues to incorrectly allege which district seat Plaintiff sought and obtained. While this cannot be anything more than a mistake on Plaintiff's part, its serial continuation cannot be ignored as it thus undermines any sense of the accuracy of Plaintiff's allegations and, on its face, negates any possibility of his having standing to advance this matter.

confer standing. *See Bost v. Illinois State Board of Elections*, 114 F.4th 634, 643 (7th Cir. 2024).⁶

WHEREFORE, as Plaintiff lacks standing to advance this matter, Defendant Luzerne County Board of Elections and Registration hereby moves this Honorable Court to dismiss Plaintiff's Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

b. Plaintiff's claims are moot

26. Paragraphs 1 through 25 are incorporated herein by reference.

27. As noted above, Plaintiff is now the duly elected Representative of Legislative District 117. Given this, the harm which allegedly resulted from any of the alleged registration and/or mail in ballot failures had no bearing on his electoral success.

28. "A plaintiff's claim is rendered moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. The central question of all mootness issues, then, is whether changes in circumstances that prevailed at the beginning of the litigation have forestalled any occasion for

⁶ Plaintiff had every opportunity to advance his case before this Court during the November 4 scheduled evidentiary hearing, but decided to withdraw his request for injunctive relief, declaring for himself that any relief granted would not have "practical" effect, rather than leaving to the Court the decision as to what, if any, versions of relief were proper and available. *See* Docs. 11 and 12. Any claim that expenditure for this withdrawn effort confers standing is wholly without merit.

meaningful relief." *Mayer v. Wallingford-Swarthmore Sch. Dist.*, 405 F. Supp. 3d 637, 640 (E.D. Pa. 2019)(cleaned up).

29. As there is no relief available to further advance Plaintiff as candidate, his claims fall squarely within the orbit of mootness jurisprudence.

WHEREFORE, as Plaintiff's claims are moot, Defendant Luzerne County Board of Elections and Registration hereby moves this Honorable Court to dismiss Plaintiff's Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

c. Plaintiff's claims are not ripe.

30. Paragraphs 1 through 29 are incorporated herein by reference.

31. As the now-incumbent office holder whose election was not incumbered by any claimed violations by the Defendants, the seeming lynchpin of Plaintiff's claim now is that if the allegedly improper actions by the Defendants "were to continue ... it is quite possible that Plaintiff will be irreparably harmed again in the upcoming primary and/or general election ..." Doc. 22, ¶ 53.

32. As it is unclear as to what "upcoming" elections Plaintiff refers (especially since his seat will not be on the ballot until 2026), and given the extraordinarily vague assertion of some harm being "quite possible," it is clear that Plaintiff seeks peremptory action against something which may or may not occur.

33. The "basic rationale [of the ripeness doctrine] is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Marriott Senior Living Servs., Inc. v. Springfield Twp.*, 78 F. Supp. 2d 376, 384–85 (E.D. Pa. 1999).

34. Given the speculative aspect of Plaintiff's allegations and claims of harm remotely possible in the future, the Second Amended Complaint runs afoul of this doctrine.

WHEREFORE, as Plaintiff's claim is not ripe, Defendant Luzerne County Board of Elections and Registration hereby moves this Honorable Court to dismiss Plaintiff's Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

Respectfully submitted,

s/Joseph M Cosgrove
SELINGO GUAGLIARDO LLC
345 Market Street
Kingston PA 18704
570-287-2400

preferred email and fax:
jmcosgro@msn.com
570-227-0096

*Attorneys for Defendant Luzerne
County Board of Elections and
Registration.*

CERTIFICATE OF SERVICE

I Joseph M Cosgrove, do hereby certify that a true and correct copy of the present Motion to Dismiss was served this 26th day of December 2024 via the Court's Electronic Case Filing (ECF) system upon all counsel of record.

s/Joseph M Cosgrove

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